

STOCK WATER WORKING GROUP

DATE: September 3, 2009

TIME: 9:30 am – 3:30 pm

LOCATION: Conf. A, B & C

The meeting was called to order at 9:45 by Senator Rockefeller.

Evan Sheffels, Department of Ecology (DOE):

- The DOE's goal was legislation on this issue during last session.
 - o Stability for industry; establish limits on stock water use

Discussion of Minutes from Last Meeting

Restatement of Ground Rules

- Report due to the Governor on 12/1
- General agreement
- Meeting focused on stock water, but other issues may need to be addressed to address stock water
- Mandate for group is stock water
- Request for recorded votes – settled on general agreement; in report, divergent views will be identified
- Exempt wells is the issue that needs to be addressed
- Possibility of subcommittees
- Work plan of group: tour (cost prohibitive); instead invited people here to give us information
- Representative Chandler suggested a more central meeting location; Ellensburg and Moses Lake were suggested.
- Future meetings will be held once a month; today's meeting may help guide future discussions.
- Representative Blake suggested meeting around October committee assembly.

History of the Groundwater Code and Case Law Handouts

- Karen Epps, Senate Committee Services: overview of material
 - o History of the Groundwater Code handout: information found in newspapers, State Library, Governor's papers; does not address changes made to the Code
 - o Case Law handout: The Rettkowski case is not addressed; the document broadly deals with permit exemptions and not just stock water
 - Maia Bellon, Attorney General's Office (AGO), noted that the Pollution Control Hearings Board digest online also has additional information

Department of Ecology Presentation on Hydrology, Geology, Aquifer Recharge, Stream Flow Data, Well Use Data, and Other Pertinent Information

- Dave Nazy, DOE
 - o Shallow Aquifer Dungeness River Impacts
 - Map shows only impacts to the Dungeness, even though there may be other streams in the area.
 - Question about how the DOE knows that the loss shown is specific to the Dungeness; the impact is propagated in the Dungeness because it loses more water.

- Question of whether or not the DOE or the USGS have additional maps for other areas; there are maps for some other areas, but the Dungeness is a unique case because it flows into marine waters
 - Question about whether or not there is a permanent change in the relationship between the aquifer and the stream as the aquifer decreases; if the stream bed is above the water table, change is a possibility
- Question about if there is a limited amount of surface water
- Question about if there is a chart showing how long applicants have been waiting for a stock water right/permit; information is available
- Question about the size of certain stock water right certificates; certificate data may include other uses besides stock water
- Question about management structures that affect stream flow
- Discussion of additional information that may be helpful, including chart of timelines and county right permits, information about stock water right certificates for more than 50,000 acre-feet/year, and measurements during recharge and not just when pumping
 - Question about whether or not there is a chart with number of animals watered through domestic uses; data in presentation includes all permits with stock water use listed
 - Question of if there are any certificates exclusively for stock water
 - Chris Cheney – Joe Stohr’s data says there are 2300 groundwater rights permits and 37,763 groundwater claims
- Discussion about potential use versus reality of stock water rights claims
- Discussion about data collection
 - The DOE agrees that the groundwater code is useless without data and data collection is very important; data collection needs funding because it is expensive and funding is difficult in a budget tight year
 - Senator Rockefeller suggested that the lack of data could be part of the SWWG report
- Discussion about uncertainty and reliability of data. At what degree is the model compromised by uncertainty? Information is gathered at the inflow and outflow and then the model is run; accuracy is increased when more area is covered and more models are run
 - Evan Sheffels, DOE - courts have looked at uncertainty of models; one such case is discussed on Case Law handout

Industry Presentation on its Needs, How it Operates, Well Use Data, Future Outlooks, and Current Concerns

- Presentation by Jay Gordon, Washington State Dairy Federation (WSDF)
- Livestock Water Use Presentation by Chris Cheney, WSDF
 - Question about if water statistics were for consumption only; numbers include uses for the entire operation, including dust control (dairies)
 - Question about if time of year and type of feed used were factored into data; average temperatures and conditions were tried to be used
 - Question about whether there was data available for the sizes of dairies with exempt wells
 - Representative McCoy requested data sources for information used
- Grown in Washington Chicken Presentation by Chris Cheney, WSDF
- Presentation by Jack Field, Washington Cattlemen’s Association
 - Question about if troughs also water wildlife in pasture/range setting; they do

- Presentation by Ed Field, Washington Cattle Feeders Association
 - Question about how much of the market in Washington is supplied by Washington producers
 - Question about reasons for decline: is it due to lower demand? Demand is down; economics
 - Questions about cattle feeding lots: how big is the largest? Do the feed lots finish foraging cattle? The largest lot is about 40,000, and the lots do finish foraging cattle, although some Washington cattle go elsewhere. There is more capacity in Washington than in Oregon, for example
 - Question about how much water is used at a lot with capacity of 40,000; about 11 gallons/day for a lot with a capacity of 30,000, and 30-32 gallons/day is the maximum for everything including variable uses
 - Question about how long of a period is a lot typically using the maximum amount; the estimate is about 30-45 days
 - Question of why livestock numbers are increasing in Idaho; there is more cow/calf production in Idaho
 - Question of if the location of finishing feed is a factor; it is
- Presentation by John Stuhlmiller, Washington Farm Bureau
 - water conversions: 7.5 gallons per cubic foot, 326,700 gallons per acre foot, and 43,560 cubic feet/ second in an acre foot
 - 5000 gallons/day exemption = .008 cubic feet/second
 - Homes in western Washington use approximately 600 gallons/day; homes in eastern Washington use approximately 800 gallons/day
 - .5 cubic feet/second = 324,000 gallons/ day = almost 1 acre foot
 - Each day, 268.7 billion gallons of water pass through Washington , but only 4.7 billion gallons are consumed.
 - .0082% of the daily water budget is agricultural
 - Since 1980, consumptive agriculture use is decreasing
 - It is difficult to separate surface and ground water use for agriculture.
 - In 2007, the total water produced in the City of Olympia was 3,034 million gallons and the distribution system leakage was 268 million gallons.

Break for Lunch

Video Presentation on Stock Watering Operations

Historical Livestock Data Presentation

- Bob Lee, Senate Committee Services

Authority of the DOE to Protect Senior Water Rights Presentation

- Maia Bellon, AGO
 - Discussion of the Rettkowski decision
 - The case is not about exempt wells but calls into question the DOE's ability to regulate a junior right holder in favor of a senior holder.
 - The case does not prohibit the DOE from regulating against illegal pulls.

- Question of if there have been statutory amendments since case; there has been no fix to date and change would require either a statutory change or issues in an adjudication area
- Question about the DOE's authority to regulate priorities; Rettkowski applies, unless the rights are adjudicated
- Question about the DOE's authority to regulate if there is demonstrated impairment; if the dispute is junior right holder versus senior right holder, then Rettkowski applies and addressing the issue would require statutory changes or adjudication
 - The DOE's understanding of the case is the same.
- Question of if like kinds of permits can be regulated, such as if the junior holder pulls at the detriment of the senior holder; the answer is unclear and hasn't been tested in court
 - The DOE would prefer to believe they could regulate in that situation.
 - As of now, adjudication is the sole mean used to make determinations.
- The court is sensitive to treating it like a property right
 - A Superior Court would have authority to make decision. Claims must be determined by who has the oldest right of limited resource.
- Question of if superior impairment could go to court; it could
- Question of how impairment is defined and if there is an official definition; Posthuma case has a good definition
- Question about the decision in the context of prospective rights and of whether the DOE is prohibited from making determinations on applications; if new right impairs existing holders, the DOE must deny the request under the 4 part test
- The DOE believes closure can be determined on exempt wells or prospective rights.
 - The DOE has rules under their rule making authority that "regulates" exempt wells on closed waters (in adjudication).
 - Exceptions do exist, usually for single uses.

Environmental Organizations' Presentations on Environmental Issues

- Mo McBroom, handout
 - Notes that water is scarce, surface and groundwater are connected; the DOE lacks data; industry has pressures; people want water; tribes have needs
 - Group needs to discuss how manage the whole "pie," focus on equity, question what the real life limitations are, and look at what the impacts on the future are
 - Representative Chandler notes that lack of tribal representation is by their choice.
- Presentation by Rachael Paschal Osborn, Center for Environmental Law & Policy
 - Question about source of data; the DOE is the data source.
 - Discussion of if water is over appropriated.
 - It is not blanket over appropriated everywhere but adding in tribal rights and other permits makes it over appropriated.

- Federal rights are not theoretical but are difficult to quantify.
- There is a difference in operating from the perspective of none versus all, i.e. it is different to regulate when under the assumption that we are running out of water. Impairment needs to be more than an assumption.
- Water is managed successfully in the Yakima Basin, imperfect as it may be.
- Discussion of whether or not everyone would agree that more adjudication would be useful.
- Representative McCoy noted that the tribes do not view the SWWG as a government-to-government relationship and will talk to the chief executive. Representative McCoy is trying to encourage them to participate.
- Representative Chandler respects that position but wants to note that the tribes were invited to participate.
 - The DOE sent letters to all 29 tribes asking them to participate.

Next Steps, Additional Meeting Dates

- Need to have constructive conversation about where the decisions lie
- Metering everything is one possible idea
- Maybe we've done enough
- Representative Blake suggested that a smaller subcommittee be formed to discuss stock water in a smaller group.
- Representative Warnick suggested that the subcommittee come up with five pathways and have a vote on priorities at the next meeting.
- What problem are we trying to solve?
- Perhaps it would be constructive to have all parties say what they want to see come out of this process.
- Exempt wells are giving us the problem, as any new wells have to be permitted. Any existing well needs to be limited to 5000 gallons/day.
- There is a discussion about what the law is and what the law should be. There are many bills during session, and stockwatering is only part of our water management problems. The conversation should continue.
- What may happen in a perfect world for some may not address the needs of others.
- John Stuhlmiller suggested discussing the date for the next meeting and letting the co-chairs come up with topics and draft recommendations for the next meeting.
- There may be individuals that want to come forward with specific recommendations to think about and incorporate into a recommendation to the Governor and committees. Not everyone is satisfied that the data we have is very good. The data shows that there is a decline in water as time goes on. If we answer the question, where should we locate large operations that are major users of water?
- Discussion about making decisions about locations for water facility based on industry needs. Where is the best opportunity for them to flourish in the state? How would we help the industry survive by locating the industries in areas that are dependable and predictable?
- Discussion about looking at reallocation in a way that would benefit livestock.
- There are relinquishment concerns.

Senator Morton moved that the SWWG meet again and find a date between Tuesday, September 29th, Wednesday, September 30th, and Saturday, October 3rd that would work for the next meeting date.

Staff suggested that 3:30 pm on Friday, October 2nd might work for a three-hour meeting.

The meeting was adjourned at 3:53 pm.

AN AUDIO RECORDING OF THE MEETING IS NOT AVAILABLE.

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